the *practice* is less so. As evidenced by the volume of cases in the appellate courts, third party creditors attempt to attach *exempt* funds in a bank account quite often.[70] While the federal recipient always wins, because the law is crystal clear on this point, the recipient had the burden of finding an attorney, prevailing in the case, and doing without the federal payment during the duration of the litigation. However, low income recipients of federal benefits -- such as those on needs based assistance programs -- generally lack the resources to pursue court challenges and in any event cannot afford to do without the benefits needed simply to survive while awaiting a court decision.

At the same time, creditors are becoming more brazen about seeking the funds they believe they are entitled to, especially against consumers who they know have fewer resources to defend themselves.[71] ***Fear of having their meager resources attached by creditors is an important reason why some federal recipients do not use banks.*** Fear of attachment is also a significant reason why many recipients are still resisting direct deposit.[72]

The solution is simple: Treasury should clarify that the financial institutions which provide accounts established for the express purpose of complying with the mandates of EFT 99, to receive Social Security, SSI, VA or similar federal funds are prohibited from allowing any execution, attachment, garnishment, levy or other legal process against any funds in those accounts. This rule should apply to the voluntary accounts as well as to the ETA accounts. Two dividends will immediately be achieved by such a rule: the federal payments which Congress intended to be safe from creditors will in fact be much more protected, and because recipients will be reassured of the safety of their federal payments, more recipients will sign up for accounts voluntarily with banks.

Protection from Set-off. Garnishment, attachment and execution are all remedies enforced to address the claims of third parties against the debtor, and while the practice may be cloudy, the law is clear. The states are split on the issue of whether a bank that is a

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[70] *See eg.* S&S Diversified Services L.L.C. v. Taylor, 897 F. Supp. 549 (D. Wyo. 1995) (Social Security old age benefits remained exempt when commingled with other funds in joint account, so long as they are "reasonably traceable." Court warned creditors it may impose sanctions for attempt to garnish exempt funds); NCNB Financial Services v. Shumate, 829 F. Supp. 178 (W.D. Va. 1993) (first in first out accounting rule applied to exempt old age Social Security benefits); Hatfield v. Christopher, 841 S.W.2d 761 (Mo. App. 1992) (where recipient cashed his Social Security check, spent part of it and deposited balance in account commingled with other funds, benefits remained exempt); Collins, Webster & Rouse v. Coleman, 776 S.W.2d 930 (Mo. App. 1989) (Social Security benefits exempt); Dean v. Fred's Towing, 801 P.2d 579 (Mont. 1990) (Social Security benefits of non-debtor wife remained exempt when commingled in joint account with debtor husband; first in first out accounting rule).

[71] *Id.*

[72] We have heard from numerous low income clients who do not want to participate in EFT 99 because of these fears.

creditor of the consumer may use the self-help remedy of *setoff* to seize funds in the consumer's bank account which are exempt from legal process.

The bankers' right of a setoff can be a devastating remedy when employed against funds needed for a household's essential living expenses. The amount of an entire social security or other check may be taken from the debtor's bank account without any warning, leaving the debtor without resources to meet the necessities of life. While the majority rule is that otherwise exempt income (e.g., social security, welfare, disability, retirement funds)[73] is also exempt from setoff,[74] a significant minority of courts, through a variety of rationales, allow a setoff against these same types of funds.[75] Some recent minority rule cases fail even to acknowledge older cases in the same jurisdiction[76] which follow the majority rule.

The extent to which it is legal for a bank -- or another creditor -- to set-off Social Security payments, or other exempt funds is critical to the evolution of the regulations implementing EFT 99. As we have been maintaining for months, one of our greatest fears resulting from Treasury's failure to regulate the voluntary accounts, will be the coerced purchase of other financial services from the non-financial institutions. If a federal recipient must return month after month to a check casher or a finance company to obtain the federal payment, it is highly likely that eventually the recipient will fall prey to obtaining a high cost loan from that provider. If the right of set-off is permitted in that jurisdiction, what is to prevent the non-financial institution from claiming a portion or all of otherwise exempt funds if the recipient falls behind in making the payments on the high cost loan?

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[73] An extensive listing of state and federal exempt property statutes is found in National Consumer Law Center, *Fair Debt Collection Practices Act* (3rd ed. 1996) Ch. 16, and National Consumer Law Center, *Consumer Bankruptcy Law and Practice* Ch. 10 (5th ed. 1996); Exemptions, 7 Collier on Bankruptcy (1988). *See also* W. Vukowich, *Debtor's Exempt Property Rights,* 62 Georgetown L. Rev. 779 (1974).

[74] Atlantic Life Insurance Co. v. Ring, 187 S.E. 449 (Va. 1936) ("The exemption of such payments from setoff finds strong support in the textbooks and in decided cases."); Anno., *Availability of Debtor's Exemption to Defeat Counterclaim or Setoff,* 106 A.L.R. 1070 (1937). *See* Kruger v. Wells Fargo Bank, 11 Cal. 3d 352, 113 Cal Rptr. 449, 521 P.2d 441 (1974); Finance Acceptance Co. v. Breaux, 160 Colo. 510, 419 P.2d 955 (1966); Bettcher v. Bristol Savings Bank, Clearinghouse No. 30,961 (Conn. Super. Ct. 1981); Carlough v. City Federal Sav. & Loan Ass'n, Clearinghouse No. 44,838 (N.J. Super. Ct. 1984). *See also* exemption prevails over bankruptcy right of setoff: *In re* Klein, 10 B.R. 356 (Bankr. 9th Cir. 1981); *In re* Hoffman, 12 B.R. 371 (Bankr. M.D. Tenn. 1981).

[75] Frazier v. Marine Midland Bank, 702 F. Supp. 1000 (W.D.N.Y. 1988); *In re* Gillespie, 41 B.R. 810 (Bankr. D. Colo. 1984); Dougherty v. Central Trust, *Consumer Cred. Guide* (CCH) ¶ 96,014 (Ohio Sup. Ct. 1986) (per curiam); Bernardini v. Central Nat'l Bank, 290 S.E.2d 863 (Va. 1982).

[76] *Compare* In re Gillespie, 41 B.R. 810 (Bankr. D. Colo. 1984); Bernardini v. Central Nat'l Bank, 290 S.E.2d 863 (Va. 1982) *with* Finance Acceptance Co. v. Breaux, 160 Colo. 510, 419 P.2d 955 (1966); Atlantic Life Insurance Co. v. Ring, 187 S.E. 449 (Va. 1936).

The most practical course for consumers to take to protect against the bankers' right of setoff, at least in the minority states and those without recent precedent, is not to maintain an account at a bank or other depository institution to which they owe a debt or where they have cosigned for another debtor. However, because EFT 99 will force these relationships into existence before the debts are created, and because of the difficulty entailed in *switching* EFT providers, this option will effectively not be available *after* the recipient enters into the credit arrangement with the EFT provider.[77]

Again, the solution is easy. Treasury should absolutely prohibit any financial institution or non-financial institution which is a conduit for the electronic payment of federal money from setting off any debt against the federal money.

Provisional credits under the Electronic Funds Transfer Act. Another issue is how provisional credits made to recipients under the requirements of the Electronic Funds Transfer Act[78] after there has been an unauthorized transfer, will be recouped from the recipient when the bank has determined that the transfer was not unauthorized. These problems are most likely to arise when there is a dispute regarding the appropriate application of the Electronic Funds Transfer Act.

An example of when a transfer may be considered to have been unauthorized would be when the recipient has reported a card stolen and money missing from the account; the bank makes the provisional credit required by 12 C.F.R. § 205.11(c), then determines that the transfer was made by the recipient's brother who knew the PIN number because he had used the card with permission on previous occasions. Under the definition of "unauthorized transfer" in the EFTA, this would not be considered an unauthorized transfer.[79]

In the recent Direct Payment system pilot project in Texas, it appears that in this scenario the financial institution is simply going back and withdrawing the money directly out of the account. No notice or hearing is offered, even though the provisional credits are

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[77] The courts in *In re* Gillespie, 41 B.R. 810 (Bankr. D. Colo. 1984) and Bernardini v. Central Nat'l Bank, 290 S.E.2d 863 (Va. 1982) recommended that consumers simply switch banking providers because the law provided no other protection against set-off of exempt funds. However, this option will not be available for EFT recipients.

[78] The financial institution is required to provisionally credit a consumer's account in the amount of the alleged error within 10 business days after receiving the notice of error. 12 C.F.R. § 205.11(c).

[79] The definition of "unauthorized electronic fund transfer" does not include "any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account, unless the consumer has notified the financial institution involved that transfers by such other person are not longer authorized,..." EFTA § 903(11).

exactly analogous to an overpayment. Yet under the Social Security statute, notice, hearing and an extended time period for repayment are required. This is wrong and probably illegal.

The correct policy should be that set-offs are never permitted for special accounts established to receive federal benefit payments. When provisional credits have been incorrectly made by the financial institution, the institution should be able to recoup its money from the federal government immediately. The government then should treat the provisional credit as an accidental overpayment and apply the overpayment rules, including the right to notice and hearing, accordingly.

V. Treasury's Proposed Waiver for Itself from These Regulations Is Overly Broad.

Without offering any explanation as to the need for or intent of this provision, the Proposed Regulations includes 208.10, which would enable the Secretary, at his or her sole discretion, to waive any provision of these rules whenever the Secretary deems it necessary or appropriate. No formal rulemaking process or any other formal review process would be required. The inclusion of such a provision renders the protections otherwise afforded under these regulations meaningless, since they could be withdrawn at any time and for any reason simply at the Secretary's discretion. Such broad authority presents an unwarranted threat to the normal checks and balances inherent in a democracy. Recipient advocates have vehemently opposed even less far reaching waiver provisions whenever they have been considered in the public benefits context and for very good reason: when dealing with the most vulnerable of our citizens, many of whom are totally dependent on the receipt of these benefits to meet their basic needs, every assurance must be provided that there is full opportunity for their input in the rulemaking process before any final decisions are made.

One Treasury official suggested at the Baltimore hearing on October 30, 1997, the intent of this provision was to permit the Department to make limited, technical changes to these regulations to address unanticipated glitches or "exceptional circumstances" that might come to light after these regulations are finalized. He said speedy action might be needed to prevent harm to certain classes of individuals without imposing any new burdens on other populations. If that description of the need is the sole reason for this broad waiver provision, then the provision should be more narrowly drafted to address this more limited need. Further, the provision should specify how such technical amendments or clarifications would be promulgated and what opportunities would be afforded to solicit and respond to public comments either before or after the fact on such modifications, which may themselves have unintended consequences that need to be considered by Treasury.[80]

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[80] After all Treasury does not have much history dealing with the special needs of the many of the diverse groups which will be particularly impacted by EFT 99.

While the current administration's intent in providing this waiver authority to the Secretary may in fact be benign in nature, the broadness of the provision as drafted opens the door to abuse at some future point when the best interests of the affected recipient populations may not be of paramount importance. This is especially true since neither the proposed provision itself nor the Preamble to the Proposed Regulations establishes any standards governing the exercise of this authority or otherwise speaks to its limited intent. At a minimum, the regulation should include a stated prohibition on any waiver of any portion of the regulations that would prejudice any recipient's rights otherwise guaranteed under the statute or implementing regulations.

Whether or not the current Administrative Procedures Act or that which may govern at some future time provides sufficient protections to insure that the Secretary does not abuse this authority is really besides the point. The concerns we have raised about the proposed language of Section 208.10 need to be addressed here and now in these regulations to prevent any possible harms to recipients of government benefits before they occur. Recipients should not be forced to take a chance that harms may occur because the rules gave the Secretary unintended authority that might subsequently be undone if they are lucky enough to find an attorney who can eventually prevail with an APA claim in court.

Summary of Documents in Appendix D

Financial abuse -- in the form of high costs, abusive terms, and the loss of options and property -- is clearly and unequivocally the result of the lack of regulation in financial services markets. In the United States, low income consumers have been subjected to an escalating level of financial abuse over the past twenty years. The increasing costs of credit to low income consumers have resulted *from* either the lack of regulation of certain consumer credit practices (eg. check cashers' fees and rent to own transactions) or the actual dergulation of existing consumer protections (eg. the mortgage loan rates and terms).

Standard marketplace dynamics, relying on disclosures, educated and savvy consumers, as well as effective choice of different providers, does not work in the low income community. The reasons for this are many -- more abusive providers, fewer actual choices available, a perception of lack of choice, less access to enforcement authorities. But, as documented in the resources listed below, the result is clear: the lack of regulation leads to higher costs and more abuses in the low income community.

Set out below is a list of some of the articles, court decisions, reports, and Congressional statements and testimony on the effect of the lack of regulation on low income consumers in the United States. These are provided to *prove* to Treasury to the extent that we are able in the context of this regulatory proceeding that Treasury's failure to regulate the voluntary accounts established by federal benefit recipients to comply with EFT 99, *will undoubtedly cause tremendous hardship to federal benefit recipients. High fees, and the lack of consumer protections on many accounts established to receive government benefits will be the actual effect of Treasury's failure to regulate.*

Loan Abuses

D1. Michael Hudson, "Loan Scams that Prey on the Poor," Business and Society Review, (Wntr 1993). (Deregulation of banks in the 1980s allowed second-mortgage abuse to become widespread with the victims being disproportionately poor.)

D2. Mike Hudson and Adam Feuerstein, "Reforming High Finance" Southern Exposure vol. 21 p. 33-36 (Fall, 1993). (The patchwork system of state and federal regulations effectively exempts low-income and working-class consumers from government protections so that across the southern U.S. predatory lenders operate virtually unchecked.)

D3. Mike Hudson, "The Poverty Industry" Southern Exposure vol. 21 p. 16-26 (Fall, 1993). (Corporate America profits off poverty in a variety of ways including check cashing services, pawn shops, and second mortgages and has not been made accountable. Banks extend huge lines of credit to these unregulated companies that lend money to the poor despite the fact the banks themselves refuse to lend to the poor.)

D4. Lewis, Joan Koonce, Roger Swagler and John Burton, "Refund Anticipation Loans and the Consumer Interest: A Preliminary Investigation," Consumer Interests Annual, Vol. 42, 1996, p. 167-172. (Study of refund anticipation loans found that typical interest rates for short term

personal loans secured by an anticipated refund on the consumer's federal income tax were 100% APR. Refund anticipation loans are deceptively marketed as fast, quick or rapid refunds which are in fact loans.)

D5. "Our Neighborhood Banks: High Cost Loans for Low Income Borrowers," Consumers Union Southwest Regional Office, July 1997. (Report documents the very high interest rates charged by pawn shops, check cashers and finance companies located in low income and minority communities in Texas. Borrowers at pawn shops pay a monthly fee of 20% of the loan each months for loans under $132, or 240 percent APR. Finance companies typically charge the highest interest rates allowed under the Texas Credit Code, ranging from 30% to 90% APR, depending on the size of the loan. Major banks reap large profits from their finance company subsidiaries.)

D6. Caskey, John P. "Lower Income Americans, Higher Cost Financial Services," Filene Research Institute Center for Credit Union Research, Chapter 4 p. 31-53, Madison, WI, 1997. (Research documents operations of alternative financial services providers, including consumer finance companies, car title pawns, traditional pawnbrokers, check-cashing outlets, rent-to-own operations.)

D7. Fleet Finance, Inc. of Georgia v. Jones, 430 S.E.2d 352 (Ga.1993) (Mortgage lender charged nonrefundable, nonrebateable, front-end interest fees from 22% to 27% of the principal and additionally charged yearly interest rates of 18.9% per annum to 19.9% per annum. The court held, "[a]lthough we do not condone Fleet's interest-charging practices, which are widely viewed as exorbitant, unethical, and perhaps even immoral, and suggest that further regulation of the lending industry is needed by our General Assembly to insure the economic survival of individuals like the appellees, we are constrained to hold that the loans in question are legal and not usurious." at 354.)

D8. In Re White, 88 B.R. 498 (Bkrtcy.D.Mass. 1988) (Variable interest rate is allowed upon default when debtor is solvent. The court will not allow an interest rate of 48% per annum. The Bankruptcy Code does not unequivocally forbid penalties but the court cannot sanction such high interest. Interest rate was unreasonably and grossly disproportionate to real damages suffered by creditor from debtor's default.)

D9. Steven W. Bender, "Rate Regulation at the Crossroads of Usury and Unconscionability: the Case for Regulating Abusive Commercial and Consumer Interest Rates Under the Unconscionability Standard," 31Houston Law Review 721 (Fall 1994) (The deregulation of interest rates by states and the preemption by Congress of state usury ceilings in the 1980s caused interest rates on different types of loans including rent-to-own, check cashing services, home

equity loans, and car loans to spiral out of control. The author argues that unconscionability standard rather than usury ceilings is the preferable method of protection.)

D10. Williams v. E.F. Hutton Mortgage Corporation, 555 So. 2d 158 (Ala. 1989) (Alabama's unconscionable statute did not apply to loans that were prepaid as it only acts an a defense and

not as an action for affirmative relief. No usury laws limit interest on loans over $2,000 so consumers are not protected from usurious interest on prepaid loans.)

D11. Paulman v. Filtercorp, 899 P.2d 1259 (Wash. 1995) (The court found that a loan with 60% interest per annum for commercial purposes was not subject to state usury laws. The dissent called the loan one that would make a loanshark proud and stated that one could argue the transaction was so outrageous as to be unconscionable and against public policy but such an argument had not been presented.)

Rent To Own

D12. "Don't Rent to Own: PIRG's 1997 National Rent-To-Own Survey," U. S. PIRG, June 1997. (National survey of rent-to-own stores found stores charged prices that produce average effective Annual Percentage Rates of 100 percent, although APRs are not disclosed due to weak state rent-to-own laws in 44 states. Survey found that 37% of items had no clear marking "used" or "new.")

D13. "How Low Income Area Consumers Pay Too Much for Too Little: Survey of Richmond (VA) Area Rent-To-Own Stores, " Virginia Poverty Law Center and Virginia Citizens Consumer Council, June 30 1997. (Study of 17 Richmond rent-to-own stores found that stores charged effective annual interest rates of over 150% and failed to timely disclose the terms of sale and the conditions of their products. A rent-to-own purchase can cost more than four times the cash price of the same product at conventional stores. Half the stores surveyed did not disclose the total cost of the product.)

D14. Lee Hubbard, "The Rent-to-Own Rip-Off," San Francisco Bay Guardian, January 23-29, 1997. (The rent-to-own industry is part of the fringe financial industry and charges outrageous interest rates because the rent-to-own industry is not required by federal or state law to disclose its interest rates. The industry also refuses to classify its contracts as credit agreements or admit that its rental fees are a form of interest.")

D15. "The Bankruptcy Code Should Crack Down on the Rent To Own Scam," Comments by Neil J. Fogarty, President, Consumers League of New Jersey, Public Hearing, National Bankruptcy Review Commission, May 14, 1997. (Testimony urged that the Bankruptcy Code treat rent to own in law according to its economic reality: RTO is a credit sale, with a security interest, at usurious interest rates, under deceptive circumstances. Weekly prices with no disclosure of APR mislead consumers into underestimating the cost of buying on rent to own.)

D16. Susan Lorde Martin & Nancy White Huckins, "Consumer Advocates vs. the Rent-to-Own Industry: Reaching a Reasonable Accommodation" American Business Law Journal vol. 34 (1997). (Balanced regulation that takes into account the uniqueness of the rent-to-own industry is necessary to keep rent-to-own stores in business while eliminating the economic exploitation of people with limited financial resources and few retail options.)

D17. In re Allen, 174 B.R. 293 (Bkrtcy.D.Or. 1994). (Court found rent-to-own agreement in which debtor would pay $1,558.96 in weekly installments for 24 months to purchase a washer and dryer which could be purchased for $779.48 cash not to be unconscionable.)

D18. Thomas J. Methvin, "Alabama's Poverty Industry" The Alabama Lawyer 234-241 (July 1997). (Due to lack of regulation and poor education, Alabama's poverty industry comprised of consumer finance companies, pawn shops, check cashing outlets, rent-to-own centers, and debit insurance companies thrives and continues to tighten its hold on impoverished Alabamians.)

D19. Emery v. American General Finance, Inc., 71 F.3d 1343 (7th Cir.1995) on remand 938 F.Supp. 495 (N.D.Ill. 1996). (The court stated that a loan flipping in which a consumer ended up paying $1200 for a $200 loan was a sleazy sales tactics but did not hold that defendant violated RICO but remanded the case for amendment of the complaint. On remand, the district court found the amended complaint did not state a claim under RICO.)

Check Cashers

D20. Consumer Federation of America, "The High Cost of 'Banking' at the Corner Check Casher: Check Cashing Outlet Fees and Payday Loans" Study by Jean Ann Fox. (August 1997 Updated September 1997). (Nonbanked consumers and convenience users of check cashing outlets pay a high price for converting checks into cash due to inadequate state laws and enforcement. Some check cashers and other entities make short-term loans at triple digit interest rates by lending money on post-dated checks.)

D21. "The Poor Pay More ...For Less: Financial Services," Report by Mark Green, Public Advocate for the City of New York, April 1994. (Report details the disappearance of banks and influx of check cashers in New York neighborhoods. A typical check cashing customer spent as much as $480.52 a year for check cashing and related financial services in New York state which has one of the lowest fee ceilings in the country.)

D22. "A Poor Choice: Check Cashing Services in Texas," A Report Prepared by the Southwest Regional Office of Consumers Union, Austin, Texas, March 1995. (Report examines the cost of cashing checks in three Texas cities and found that a typical family with $15,000 annual take-home pay would spend $220.50 a year to cash paychecks. The survey found that the annual cost of a basic checking account in Texas ranged from $0 to $71.40, while the annual cost for similar services at a check-cashing outlet ranged from $150 to $373.50, a 210 percent to over 500%

difference. Report describes "sale-leaseback" variation on payday loans, with $200 loan for 15 days costing $64.95.)

D23. "The High Cost of Check Cashing," A Report Prepared by the Consumers Union of U.S., Inc. West Coast Regional Office, May 1994. (Report examines cost of cashing checks in the Bay Area of California and found that a family with $15,000 annual take-home pay would spend $300 per year to convert paychecks to cash.)

D24. "The Thin Red Line: How The Poor Still Pay More," West Coast Regional Office, Consumers Union of U. W., Inc., June 1993, p. 62-71. (Describes the absence of mainstream financial services in low-income neighborhoods in California cities and the alternate financial services that have filled the gap, including check cashers.)

D25. Caskey, John P. Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor (New York: Russell Sage Foundation, 1994)

Home Equity Loans

D26. Robert Hobbs, Kathleen Keest, Ian DeWaal, "Consumer Problems with Home Equity Scams, Second Mortgages, and Home Equity Lines of Credit" National Consumer Law Center for American Association of Retired Persons (1989). (Unscrupulous lenders have developed ways of hiding grossly inflated charges behind an advertised low interest due to banking deregulation and increase in home equity lending. The article also proposes regulations to deal with various abuses.)

D27. "Dirty Deeds: Abuses and Fraudulent Practices in California's Home Equity Market," Consumers Union of U. S., Inc., West Coast Regional Office, October 1995. (Detailed description of home equity loan abuse and fraud, with high cost loans sold to homeowners with no prospects for repaying the loans. Estimated cost to California citizens run into the tens of millions of dollars. Report describes four forms of home equity fraud and abuse: home improvement contracts, disaster related home loan abuses, foreclosure rescue and bill consolidation/refinancing offers.)

D28. Chroniak v. Golden Investment Corp., 983 F.2d 1140, 1147 (1st Cir. 1993) (The court stated that after NH largely deregulated its mortgage loan industry and eliminated the usury laws applicable to such transactions, full disclosure laws took on increased significance as consumer protection provisions. Defendant had failed to disclose a 45% annual interest rate.)

D29. Julia Patterson Forrester, "Mortgaging the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing" 69 Tulane Law Review 373 (1994)

(There is no limit on interest rates a lender may charge on home equity loans due to Congressional preemption of state usury laws in this area. Congress passed laws encouraging homeowners to borrow against the equity in their homes. Home equity loans are made on undesirable terms and make it harder for consumers to retain their homes in any future bankruptcy filings. Change in law is required to make such loans fairer for consumers and prevent abuses to consumers.)

Problems in Community Development Banking, Mortgage Lending Discrimination, Reverse Redlining, and Home Equity Lending, Hearing before United States Senate Committee on Banking, Housing and Urban Affairs, 103rd Congress, February 17, 1993:.

D30. Statement of Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, p. 253. (Unregulated and licensed second mortgage companies prey on inner-city residents by

exploiting consumers through unconscionable or unaffordable loan terms or by failing todisclose key elements of the transactions.)

D31. Statement of Kathleen Keest, National Consumer Law Center, Boston, MA, p. 256. (Deregulation during the 1980s caused the increase in the exploitation of low-income consumers. One example is the home equity loans since in 1980 Congress preempted State interest rate capes on those loans. In 1982, Congress preempted state regulations on creative financing thus allowing negative amortizing of loans and balloon payments.

D32. Statement of Terry Drent, Ann Arbor Community Development Department, Ann Arbor, MI, p. 258. (Reverse redlining targets low-income families by unscrupulous mortgage companies which make loans frequently at double the market rate allegedly to help the consumer pay property taxes or home repairs. Consumer protection is needed to protect the low-income and the vulnerable from an under-checked and under-regulated segment of the banking industry.

D33. Statement of Eva Davis, Resident of San Francisco, CA, p. 291. (She was talked into a loan of $100,000 for what turned out to be $6,000 repair work. Her loan payment was $2,000 a month but she had an income of $1,100 a month.)

D34. Statement of Annie Diggs, Resident of Augusta, GA, p. 292.

D35. Statement of John Long, Esq., of Dye, Tucker, Everitt, Wheale and Long, p. 294. (There is a dual source of lending in the U.S. One by traditional sources of financing and another by non-bank banks that are completely unregulated by Congress. The latter charge high interest and a high percentage of the loan covers the points required.)

D36. Statement of Bruce Marks, Executive, Union Neighborhood Assistance Corporation of Boston, MA, p. 297.

D37. Testimony (Written) of Annie Diggs, Resident of Augusta, GA, p.382. (Her bank turned her down for $3,300 repair loan so she took a loan from a local loan company and ended up with a loan for $15,000 at an interest rate of 19.9% and 21.5% of the loan was for fees)

D38. Testimony (Written) of Eva Davis, Resident of San Francisco, CA and her loan documents, p. 382. (She testified she was talked into a loan of $100,000 for what turned out to be $6,000 repair work. Her loan payment was $2,000 a month but she had an income of $1,100 a month.

D39. Written Testimony of John B. Long and Thomas W. Tucker of the Law Firm of Dye, Tucker, Everitt, Wheale & Long and David E. Hudson of the Law Firm of Hull, Towill, Norman & Barrett with Appendix of loan materials, p. 392. (During the past decade, thousands and thousands of American homeowners -primarily minorities- have been subjected to unregulated lending practices. This is due to federal preemption of long-standing state usury statutes, the repeal of state usury statutes, redlining, and reverse redlining.

D40. Testimony (Written) of Bruce Marks, Executive Director, Union Neighborhood Assistance Corporation, p. 433. (Predatory second lending companies target working class consumers whose

only equity is their home ownership and make high interest loans which often the consumer cannot pay and thus loses his or her home

D41. Letter to Senator Donald W. Riegle, Jr. from Jeremy Eisler, Staff Attorney, South Mississippi Legal Services Corporation, p. 446. (Regulation is needed to protect areas where banks do not lend to residents from predatory loan companies.)

D42. Letter to Senator Donald W. Riegle, Jr. from Elizabeth Renuart, Managing Attorney St. Ambrose Legal Services, p. 447. (The relatively unregulated loan market in Baltimore has allowed homeowners to be taken advantage of by door-to-door repair loan companies.)

D43. Letter to Senator Donald W. Riegle, Jr. from William E. Morris, Director of Litigation Southern Arizona Legal Aid, Inc., p. 448. (Federal regulation is needed regarding mortgage broker licensing. State regulation is lacking regarding balloon payments so federal regulation is needed to outlaw brokered balloon payments.)

D44. Letter to Senator Donald W. Riegle, Jr. from Elizabeth Bradford & Marla Tepper, Assistant Attorneys General, State of New York, Department of Law, p. 451. (National solution needed for predatory lending practices in home mortgage area.

D45. Letter to Senator Donald W. Riegle, Jr. from Troy B. Smith, Homeowners Outreach Center Legal Aid Foundation of Los Angeles, p. 457. (Proposed regulations to address problem of home equity and home improvement loan fraud.)

D46. The Poor Pay More . . . For Less: Predatory Home Improvement Lending, A Report by the City of New York, Department of ConsumerAffairs, Mark Green, Commissioner, p. 460. (Home equity loan fraud is practiced upon the working poor. New laws are needed to combat this epidemic.

D47. Letter to Senator Donald W. Riegle, Jr. from John B. Long, Law Offices of Dye Tucker, Everitt, Wheale & Long, p. 469. (A reiteration of his testimony and how the void of regulated banking institution lending money in certain areas is filled by unregulated finance companies and mortgage companies that charge exorbitant rates.

D48. Prepared Statement of Senator Ben Nighthorse Campbell, p. 305. (Need to take action to stop reverse redlining.)

D49. Prepared Statement of Senator Pete V. Domenici, p. 305. (There has been an increase in home equity loan abuse since 1986 when a tax deduction for home equity loans was allowed. Need to improve laws to stop reverse redlining.

D50. Prepared Statement of Senator Carol Moseley-Braun, p. 306 (Action is needed to protect people from economic redlining.

D51. Scott Harshbarger, Attorney General, Commonwealth of Massachusetts A SpecialReport on the Attorney General's Response to the Home Improvement and Mortgage Scams in Massachusetts: Enforcement, Legislation and Regulation, October 30, 1992, p. 307. (Second mortgage lending scams were caused by inadequate regulation of home improvement contractors and lenders.)

D52. Testimony of the National Consumer Law Center (Kathleen Keest, Robert Hobbs, Margot Saunders, Gary Klein), p. 313. (Deregulation of consumer lending in the 1980s caused the growth of predatory home equity lending. Congress preempted both state usury ceilings on mortgage lending secured by first liens as well as state regulations on risky "creative financing." Many states also deregulated parts of their lending laws.)

D53. Kathleen Keest, "Second Mortgage Lending: Abuses and Regulation" National Consumer Law Center (December 1991). (The steeply rising foreclosure rates, high-rate lending instead of market-rate lending in minority communities, and fraudulent and overreaching home equity lending scams in the early 1990s were due to home equity lending in a deregulated environment. Discussion of how deregulation caused abuses and suggestions on how to protect consumers.)